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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/009,705	11/28/2001	Wolfgang Seifarth	SEIFARTH	4008
20151	7590	05/31/2005	EXAMINER	
HENRY M FEIEREISEN, LLC 350 FIFTH AVENUE SUITE 4714 NEW YORK, NY 10118			WHISENANT, ETHAN C	
		ART UNIT	PAPER NUMBER	
		1634		

DATE MAILED: 05/31/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	10/009,705	SEIFARTH ET AL.
Examiner	Art Unit	
Ethan Whisenant, Ph.D.	1634	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

1)  Responsive to communication(s) filed on 08 November 2001 and 19 July 2004.

2a)  This action is **FINAL**.                            2b)  This action is non-final.

3)  Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## **Disposition of Claims**

4)  Claim(s) 1-9 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5)  Claim(s) \_\_\_\_\_ is/are allowed.

6)  Claim(s) 1-9 is/are rejected.

7)  Claim(s) \_\_\_\_\_ is/are objected to.

8)  Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

9)  The specification is objected to by the Examiner.

10)  The drawing(s) filed on 08 November 2001 is/are: a)  accepted or b)  objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)  The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

12)  Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a)  All    b)  Some \* c)  None of:  
1.  Certified copies of the priority documents have been received.  
2.  Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3.  Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

1)  Notice of References Cited (PTO-892)  
2)  Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3)  Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
    Paper No(s)/Mail Date \_\_\_\_\_  
4)  Interview Summary (PTO-413)  
    Paper No(s)/Mail Date. \_\_\_\_\_  
5)  Notice of Informal Patent Application (PTO-152)  
6)  Other: \_\_\_\_\_

W.H.

Art Unit: 1634

**NON-FINAL ACTION**

1. The applicant's Preliminary Amendments filed 08 NOV 01 amending the claims and filed 19 JUL 04 amending the specification have been entered. Following the entry of the Preliminary Amendments, **Claim(s) 1-9** is/are pending.

**SEQUENCE RULES**

2. This application complies with the sequence rules and the sequences have been entered by the Scientific and Technical Information Center.

**35 USC § 101**

3. 35 U.S.C. § 101 reads as follows:

"Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title".

**Claim Rejections - 35 USC § 101**

4. **Claim(s) 7-8** is/are rejected under 35 U.S.C. § 101 because the claimed invention is directed to non-statutory subject matter. Claims 7 and 8 are nonstatutory because "the use of" is not a patentable category under 35 U.S.C. § 101.

**35 USC § 112- 2ND PARAGRAPH**

5. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

**CLAIM REJECTIONS under 35 USC § 112- 2ND PARAGRAPH**

6. **Claim(s) 1-9** is/are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

**Claim 1** is confusing because the phrase " that either ("MOP-ABD") " on line 4 is nonsequitur. Please clarify.

**Claim 3** is indefinite because there is no nexus between the preamble and the claim steps. Claim 3 in its preamble directs to a method which is to accomplish a particular goal. However, none of the claim steps states that this goal is accomplished. For clarity, claimed methods should recite that the purpose of the method has been attained (i.e. provide a nexus between the preamble and the claim steps).

**Claim 9** is indefinite in that it recites the phrase "at least one dot blot hybridization probe according to Claim 7." However, Claim 7 is drawn to the use of one or several oligos (i.e. a method). Please clarify.

**PRIOR ART**

7. **Claim(s) 1-6** appear to be allowable over the prior art of record because the prior art of record does not teach or reasonably suggest alone or in combination the primer mixtures recited in claim 1.

**CONCLUSION**

8. **Claim(s) 1-9** is/are rejected and/or objected to for the reason(s) set forth above.

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ethan Whisenant, Ph.D. whose telephone number is (571) 272-0754. The examiner can normally be reached Monday-Friday from 8:30AM -5:30PM EST or any time via voice mail. If repeated

Art Unit: 1634

attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gary Jones, can be reached at (571) 272-0745.

The fax number for this Examiner is (571) 273-0754. Before faxing any papers please inform the examiner to avoid lost papers. Please note that the faxing of papers must conform with the Notice to Comply published in the Official Gazette, 1096 OG 30 (November 15, 1989).



**ETHAN WHISENANT**  
**PRIMARY EXAMINER**

Art Unit 1634